

NOT DESIGNATED FOR PUBLICATION  
ARKANSAS COURT OF APPEALS  
D.P. MARSHALL JR., Judge

DIVISION II

CA06-721

4 April 2007

FIRST ARKANSAS BAIL  
BONDS, INC.,  
APPELLANT

AN APPEAL FROM THE  
PULASKI COUNTY CIRCUIT  
COURT [OT2005-9559]

v.

HONORABLE MARION ANDREW  
HUMPHREY, JUDGE

STATE OF ARKANSAS,  
APPELLEE

AFFIRMED

The circuit court entered a bond forfeiture judgment against First Arkansas Bail Bonds in May 2005. About four months later, First Arkansas moved the court to set the judgment aside under Arkansas Rule of Civil Procedure 60. The circuit court ruled that it lacked jurisdiction and denied the motion. First Arkansas appeals, arguing that the circuit court abused its discretion. We hold that no abuse of discretion occurred. First Arkansas waited too long to get relief under Rule 60(a) and presented insufficient grounds for relief under Rule 60(b) or (c).

This case began when First Arkansas gave a bail bond for Michelle Jackson. She failed to appear in court a few months later, and the circuit court instigated forfeiture

proceedings against First Arkansas. When the court learned that the defendant's real name was Michelle Johnson, it amended the criminal information accordingly. The court continued the show-cause hearing several times at First Arkansas's request. After a hearing at which a company representative appeared briefly, the court entered a forfeiture judgment against First Arkansas on 23 May 2005. The judgment referred to the defendant as "Jackson," not "Johnson."

First Arkansas did not receive a copy of the judgment from the clerk until 25 July 2005, about two months after entry. The judgment was accompanied by the clerk's bill of costs for the \$15,500.00 judgment, with a hand-written note that read "Due Date October 17, 2005." First Arkansas notes that the payment due date is usually ninety days after the entry of a bond-forfeiture judgment, and October 17th was approximately ninety days after the clerk sent the judgment and bill to the company. First Arkansas found Johnson/Jackson in mid-September. The Pulaski County Detention Center, however, would not take custody of her because the facility was full. First Arkansas moved to set the judgment aside on 29 September 2005. First Arkansas did not move to reopen its time to appeal from the judgment. Rule 60(a) gives the circuit court discretion to correct a mistake or prevent a miscarriage of justice by modifying or vacating a judgment within ninety days of entry. First Arkansas did not file its motion to vacate within ninety days. The Rule contains no provision for extending the ninety-day period. Analogizing to Arkansas Rule of Appellate Procedure—Civil 4(b)(3), which allows a circuit court to extend the time to appeal from a judgment for a diligent party who did not have notice of it, First Arkansas argues that the

circuit court should have extended the time for its Rule 60(a) motion. First Arkansas contends that the clerk's failure to send it prompt notice of the entry of judgment, and the misleading due date for payment on the clerk's bill, justify this relief.

We affirm the circuit court's ruling denying Rule 60(a) relief. The State is correct on this issue: the Rule does not allow any extensions of the ninety-day period. *M & M Bonding Co. v. State*, 59 Ark. App. 228, 234, 955 S.W.2d 521, 524 (1997) (construing this provision when it was part of Rule 60(b) before the 2000 amendment reconfiguring the Rule). First Arkansas fares no better on the merits of its delayed-notice argument. The clerk had no obligation to give First Arkansas notice that the circuit court had entered judgment. *Cf.* Ark. Code Ann. § 16-84-207(b)(2) (Repl. 2005) (requiring clerk to notify surety when defendant fails to appear). A representative of First Arkansas attended at least part of the hearing at which the circuit court announced its intention to enter the judgment, which the court did later the same day. First Arkansas received the judgment a month before the ninety-day period expired. Finally, the clerk's note about the payment due date cannot alter the terms of the governing Rule. First Arkansas's delay in filing its motion precluded relief under Rule 60(a).

First Arkansas was not entitled to relief through Rule 60(b) either. True, the May judgment reflected Johnson/Jackson's alias instead of her real name. But even if the circuit court had corrected the judgment in that respect under Rule 60(b), the court's order would have been *nunc pro tunc*; it would not have reopened a new ninety-day period for First Arkansas to have the judgment vacated under Rule 60(a). *Holt Bonding Co. v. State*, 353

Ark. 136, 141, 114 S.W.3d 179, 183 (2003).

Nor was First Arkansas entitled to relief under Rule 60(c). The bond company's arguments here were timely, but mistaken. As the State points out, because there was no trial and this was a statutory forfeiture proceeding, Rule 60(c)(1) may not even apply. In any event, although First Arkansas did not find Johnson/Jackson until September 2005, her identity was not newly discovered evidence as the company argues. Both First Arkansas and the circuit court knew her real name before the court entered the forfeiture judgment. We also agree with the State that First Arkansas did not carry its burden under Rule 60(c)(3), which addresses misprisions of the clerk. Not sending First Arkansas the judgment immediately after entry was not a mistake by the clerk. And even if the due date on the clerk's bill for First Arkansas's payment was a mistake, it did not rise to the level of a clerk's misprision in the judgment which might justify vacating that judgment. *Cf. New Holland Credit Co. v. Hill*, 362 Ark. 329, 337, 208 S.W.3d 191, 196–97 (2005).

First Arkansas also contends that the error in Johnson/Jackson's name rendered the judgment void and that forfeiture of the bond, all things considered, works an injustice. The name error, however, does not undermine the judgment for the reasons we've already stated. We have considered the entire record and see no injustice. Johnson/Jackson failed to appear in November 2004. Approximately six months later, and after continuing the show-cause hearing several times, the circuit court entered the forfeiture judgment against First Arkansas. Pulaski County agreed to waive the forfeiture if the bond company located Johnson/Jackson at any time within three months after the court entered the judgment. Our court rules,

moreover, provided First Arkansas several avenues of relief. There is no injustice in requiring First Arkansas to fulfill its obligation as surety for the defendant's appearance.

Relief under Rule 60 is a matter of informed and guided judicial discretion. We will reverse only where the circuit court abuses that discretion—by erring on the law, acting improvidently or thoughtlessly, deciding on some improper basis, or failing to consider everything it should. *Valley v. Phillips County Election Comm'n*, 357 Ark. 494, 498, 183 S.W.3d 557, 560 (2004). The circuit court made no mistake of this kind, and therefore did not abuse its discretion.

Affirmed.

PITTMAN, C.J., and MILLER, J., agree.